

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**BECKLEY DIVISION**

JAMES PRESTON SMITH,

Petitioner,

v.

CIVIL ACTION NO. 5:04-cv-01262  
(Criminal Action No. 5:99-cr-00161)

UNITED STATES OF AMERICA,

Respondent.

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JAMES PRESTON SMITH,

Plaintiff,

v.

CIVIL ACTION NO. 5:05-cv-00633

UNITED STATES,

Defendant.

**MEMORANDUM OPINION AND ORDER**

Pending before the court in Civil Action No. 5:04-cv-1262 are the petitioner's motion to consolidate this case with No. 5:05-cv-633 [Docket 20], the petitioner's motion to vacate, set aside, or correct conviction pursuant to 28 U.S.C. § 2255 [Docket 1], and the petitioner's application to proceed in forma pauperis [Docket 30]. This action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and recommended that the court grant the motion to consolidate, deny the


motion to vacate, set aside, or correct conviction, and deny the petitioner's application to proceed in forma pauperis.

Neither party has filed objections to the Magistrate Judge's findings and recommendation.

Accordingly, the court accepts and incorporates herein the findings and recommendation of the Magistrate Judge. The court **GRANTS** the motion to consolidate [Docket 20], **DENIES** the motion to vacate, set aside, or correct conviction [Docket 1], and **DENIES** the petitioner's application to proceed in forma pauperis [Docket 30]. The court **ORDERS** that this case be **DISMISSED** and stricken from the docket.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: December 22, 2005

  
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JOSEPH R. GOODWIN  
UNITED STATES DISTRICT JUDGE